

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11190 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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IRFANBHAI BABUBHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

Mr. K.T. Dave, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 13/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. M.M. Tirmizi for the  
petitioner and learned A.G.P. Mr. K.T.Dave for the  
respondents nos.1, 2 and 3.

The matter was earlier notified for final hearing  
on 21-9-1999, however on account of request made by the  
learned Advocate for the petitioner it was adjourned from  
time to time and taken up today for final hearing.

1. The detention order dated 20-11-1998 passed by

the respondent no.2-Commissioner of Police against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "A" by way of translation and original as accompaniment inter alia indicate that two criminal cases for the offences made punishable under the Bombay Prohibition Act were registered against the petitioner at Nashabandi Police Station (West) on 26-7-1998 and 8-8-1998. That on 6-11-1998 one more case for the offence made punishable under the Bombay Prohibition Act was registered at Ellisbridge Police Station. That in all the three cases countrymade liquor was seized from the possession of the petitioner.

The grounds further indicate that two witnesses have given information against the petitioner and his antisocial activity on assurance of their anonymity. One of the witnesses has stated with regard to incident dated 4-11-1998 wherein the petitioner and his accomplice are alleged to have beaten the witness on the allegation that witness being police informant was supplying information about the petitioner. The other witness has stated with regard to incident of 8-11-1998 wherein at around 6.00 p.m. on the said day, the petitioner alongwith his accomplice had brought illegal quantity of countrymade liquor and asked the petitioner to store the same in his house. On refusal by the witness, the petitioner dragged the witness on public road and with the aid of his accomplice started beating him. The witness having raised alarm, the passersby gathered there, however, the petitioner took out a knife from his pocket and rushed to the people whereby, out of fear, the people gathered there dispersed.

3. On the basis of the aforesaid material, the respondent no.2 has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That though the petitioner was in police custody on account of criminal case registered against him vide CR no.158/98 and 166/98, the likelihood of petitioner obtaining bail and repeating his antisocial activity could not be ruled out. The respondent no.2 has also considered that enforcement of general law would be insufficient to prevent the petitioner from continuing his antisocial activity which is likely to adversely affect the maintenance of public order, and as such,

impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that vide representation dated 24-9-1999, copy of which is produced at page 29 of the compilation, the petitioner requested the authority to supply the statement of witnesses named in the said representation. That the authorities have failed to supply the same which has prevented the petitioner from making effective representation against his detention, and as such, the fundamental right guaranteed under Article 22(5) of the Constitution having been violated has rendered the continued detention of the petitioner illegal.

5. It may be noted that despite service of rule, none of the respondents has filed any affidavit-in-reply. Learned A.G.P. Mr. K.T. Dave on instructions and referring to original file has stated that the representation dated 24-9-1999 was received by the authority, however, the file does not disclose the fact whether the statements claimed by the petitioner through said representation were supplied to the detenu or not. That in the absence of any material placed on record on behalf of the respondent, the logical conclusion would be that the respondents have failed to supply the documents claimed by the petitioner to make effective representation. That thereby, the constitutional imperative under Article 22(5) having been breached, the continued detention of the petitioner has become illegal and the petition is required to be allowed.

6. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised by the petitioner.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 20-11-1998 passed by the respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner detenu-Irfanbhai Babubhai Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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